UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Joplin, Missouri

AUTO TRUCK TRANSPORT CORP.

Employer

and **Case No. 16-RC-10551**

TEAMSTERS LOCAL UNION NUMBERS 745, 657, 71, 773, 223, 654 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

and

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Intervenor

DECISION AND ORDER DISMISSING PETITION

Auto Truck Transport Corp., a Georgia corporation with a corporate office in Joplin, Missouri, is engaged in the business of providing transport and cargo handling services for clients at and between various facilities nationwide, including Texas.

Teamsters Local Union Numbers 745, 657, 71, 773, 223, 654 A/W International Brotherhood of Teamsters, hereinafter referred to as "Petitioner," filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent three single-facility units each consisting of all driver employees, including but not limited to drive-away and lowboy drivers, yard employees and shop employees at the

Employer's facilities in Cleveland/Mt. Holly, North Carolina; Macungie, Pennsylvania, and Portland, Oregon; and excluding all other employees including independent contractors, confidential employees, guards, and supervisors as defined in the Act.

The Employer's employees are represented by the International Association of Machinists and Aerospace Workers, AFL-CIO, hereinafter referred to as "Intervenor," the sole bargaining representative for all Auto Truck Transport driver, yard, and shop employees at the Employer's eleven facilities, including those petitioned-for single-facility units.

The Petitioner contends that compelling circumstances exist which render the current bargaining unit inappropriate, and the employees should be permitted to exercise their statutory right to elect a representative. The Employer and Intervener contend that compelling circumstances that would allow the splintering of the longstanding bargaining relationship between the Employer and the Intervenor do not exist, and therefore, the Petitioner has not met its burden to demonstrate that the existing multi-facility unit is inappropriate. Alternatively, the Employer argues that the petitioned-for units constitute lawful accretions.

A hearing was held before a Hearing Officer of the National Labor Relations Board. Each party filed a brief with me. I have considered the evidence adduced at the hearing and the arguments advanced by the parties. For the reasons set forth below, I find that the Petitioner has not demonstrated compelling circumstances which override the longstanding bargaining history between the Employer and Intervenor, allowing severance of the historical multi-facility bargaining unit. Accordingly, the petition is dismissed.

STATEMENT OF FACTS

The Employer transports new and used trucks from manufacturers to dealers, processors, and body builders. The drivers who transport the trucks are assigned to one of eleven

terminals nationwide: Portland, Oregon; Detroit, Michigan; Springfield, Ohio; Macungie, Pennsylvania; Baltimore, Maryland; Dublin, Virginia; Cleveland/Mount Holly, North Carolina; Jacksonville, Florida; Conway, Arkansas; Garland, Texas; and Laredo, Texas. The Employer's corporate office, also referred to herein as "Central Support," is located in Joplin, Missouri. The Employer opened several new terminals beginning in 2001. Garland opened in October 2001. The Dublin and Mount Holly terminals opened between December 31, 2001 and June 1, 2002. The parties agreed and I find that Mount Holly is an addition to the Cleveland terminal, and the two facilities constitute a single unit for the purposes of this proceeding. The Employer closed a facility in Winnsboro, North Carolina, in December 2002, and opened Macungie between June 1, 2002 and December 31, 2002. Portland opened sometime between December 31, 2002 and June 1, 2003. Conway and Springfield opened between June 1, 2003 and May 1, 2004. Each of these facilities, with the exception of Mount Holly, was initially staffed by existing employees who transferred from other ATT terminals pursuant to the transfer and bid procedure in the current, negotiated agreement. The record reflected that as employees transferred into each of the new facilities, they signed authorization cards, and the Intervenor requested recognition from the Employer, which the Employer granted. During the time beginning in 2001 and ending in 2004, the employee complement grew from approximately 286 employees to 1351 employees, a 372 percent increase.

The Employer and Intervenor have enjoyed a fourteen-year bargaining relationship. During this time, the Employer experienced substantial growth, which is reflected in the numbers set forth in the preceding paragraph. The record reflects that during the course of this relationship, the Intervenor has not expressed a desire to represent anything other than a multi-location unit. The Employer and Intervenor are parties to a single master bargaining agreement,

which applies to bargaining unit employees nationwide and is effective February 2001 through February 2005. The agreement embodies the wage rates, benefits, work rules, operating procedures, and grievance procedures that apply company-wide. The parties' first negotiated agreement covered the period from February 1990 through February 1995. The parties entered into subsequent agreements that covered the periods March 1995 through March 1998 and March 1998 through March 2001. Prior to the current negotiated agreement, national agreements included local supplements. Each agreement contains an article dealing with transfers resulting from the addition and closure of terminals. The first agreement also contained an accretions clause.

The 2001-2005 negotiation process ended the practice of local bargaining. Additionally, in 2003, the parties amended the agreement to include another level of review under the grievance procedure, with the purpose of avoiding unnecessary arbitration. Under the new policy, if impasse occurs at the local level, the grievance elevates to a national committee, which ultimately decides whether to arbitrate. The 2001-2005 contract also includes a transferability/bid process and the standardization of shift differential pay. Finally, in 2004, the Employer and Intervenor negotiated and agreed on a dispatch procedure whereby drive-away drivers could choose trips in either of two zones. Drivers who choose blue zone trips typically return to their domicile terminal after the trip, and drivers choosing yellow zone trips remain subject to additional assignments away from their home terminals on a first-in-first-out basis. The record also revealed a history of negotiated changes to dispatch procedures. Prior to the implementation of the latest procedure, beginning approximately in Fall 2002, drivers did not have the option for a return trip and could be on assignment indefinitely.

With regard to the Employer's structure, the record reflects that the corporate officers and directors, as well as the Central Support system which includes central control, central dispatch, and central payroll are located in the corporate office in Joplin, Missouri. Some labor relations, analytical, and financial functions are also contained at this location. The Employer maintains a highly centralized recruitment and hiring system. Driver applicants may seek employment by calling into Central Support in Joplin, Missouri, where the applicant is pre-screened and given the opportunity to apply, and where the decision to hire is made and extended. In addition to a centralized process, yard and shop employees may be hired locally. Orientation is conducted at one of four facilities—Cleveland/Mount Holly, Garland, Dublin, or Macungie. All employees are subject to the same policies and enjoy the same benefits and wages company-wide. These elements are each negotiated and included in the master agreement.

Terminal managers have the authority to hire, discharge and discipline employees. Discharges administered by terminal mangers typically occur only after consultation with the executive vice-president of labor relations. The terminal managers have the authority to issue discipline such as warning notices and reprimands in accordance with the master agreement and work rules. The record reflects that the authority of terminal managers to discipline extends to employees assigned to other terminals, i.e., drivers who report to the terminal manager's facility to retrieve a load but whose domicile terminal is different. Terminal managers also review and batch time cards and trip packs before forwarding them to Joplin for processing. Trip packs are prepared at terminals and processed by Central Support. Although the terminal manager may be contacted initially, Central Support ultimately resolves payroll, travel, and other administrative issues that arise. Labor management policies and concerns are communicated to terminal managers through quarterly meetings, conference calls, and memoranda.

All bargaining unit employees enjoy the same wage rates within each classification and the same benefits, which are included in the parties' master agreement. Yard and shop employees report to their domicile terminal. The record reflects a history of yard and shop employee transfers among terminals as needed at new locations or during staff shortages. The work preformed varies at each terminal. Some terminals perform primarily drive-away work, while others perform primarily lowboy work, and some perform a combination of the two. The Employer currently employs approximately 1100 drive-away and less than 100 lowboy drivers system-wide. Some lowboy work is completed by outside contractors; drive-away work may also be contracted in situations when the demand for drivers exceeds driver resources. Drive-away work requires the skill of decking trucks onto a harness. The Employer does not require drivers of lowboys, or trailers, to possess this skill.

Drive-away drivers select trips from a board posted at each terminal. Prior to the implementation of the new zone dispatch procedures, drivers spent little time at the terminal. Instead, they called into the terminal to receive trip assignments. The new dispatch procedures resulted in increased contact among driver, dispatcher, yard, and shop employees from various terminals.

The recently-implemented zone dispatch procedure provides a system where drivers have the option to select trips that do not require extensive travel and time away from home and other life responsibilities. The current yellow zone trips have no such guarantee, and drivers may only return to their domicile terminal if, along the way, they select a yellow zone trip that affords them that opportunity. The return travel arrangements for blue zone trips are typically already scheduled at the time the driver selects the trip. Conversely, the travel arrangements for yellow

zone trips are not pre-scheduled since the next trip for the driver who selects this trip is undetermined.

ANALYSIS

The facts in this case do not demonstrate compelling circumstances which override the extensive bargaining relationship between the Employer and Intervenor. Accordingly, the petition must be dismissed.

The determination regarding the appropriateness of the petitioned-for unit requires a finding that the current unit, a historically-recognized unit that has enjoyed a longstanding bargaining relationship between the Employer and Intervenor, is no longer appropriate. ***Met Electrical Testing Co.***, 331 NLRB 872 (2000); ***Trident Seafoods, Inc.***, 318 NLRB 738 (1995). Units with an extensive bargaining history remain intact unless repugnant to Board policy. ***In re Ready Mix USA, Inc.***, 340 NLRB No. 107 (2003); ***P.J. Dick Contracting***, 290 NLRB 150, 151 (1988). The party challenging the historical unit bears the burden of demonstrating compelling circumstances to overcome the significance of a long and established bargaining history. ***Met Electrical Testing Co.***, above; ***Trident Seafoods, Inc.***, *citing* ***Indianapolis Mack Sales***, 288 NLRB 1123 fn. 5 (1988); *Compare* ***John's Bargain Stores Corp.***, 160 NLRB 1519 (1966) (an expired contract, a sharp increase in the employee complement, and lack of employee interchange found sufficient to override a three-year bargaining history), *and* ***Plymouth Shoe Co.***, 185 NLRB 732, 733 (1970) ("the changed nature and character of the current operations, the drastic diminution of the workforce and the radical change in the type and number of job classifications have so altered the scope of the original unit petitioned for and found appropriate by the Board that the original unit is no longer in existence"), *with* ***Rinker Materials Corp.***, 294

NLRB 738 (1989) (a reorganization that created new operational units did not destroy existing bargaining units).

The Employer and Intervenor in the instant case have enjoyed a fourteen-year bargaining relationship covering all driver, yard and shop employees at various facilities across the United States. Although the number of terminals and employees has increased dramatically since the inception of the bargaining relationship with the Intervenor, the increase took place beginning in 2001, after the parties had enjoyed a ten-year bargaining relationship. The Petitioner contends that the increase in the number of plants and the overall employee complement, coupled with a change in grievance procedures and dispatch procedures, compels the Board to find the existing multi-facility unit inappropriate. The record indeed reflects an increase in the size of the unit and an expansion of the company to different locations. With the exception of Mount Holly, the new locations were staffed by employees from within the Employer's ranks pursuant to transfer or bid procedures negotiated with the Intervenor. Mount Holly is not considered a stand-alone facility, but is instead incorporated into the existing Cleveland operation. The employee classifications at the new locations remain consistent with the existing bargaining unit, and all employees of the new locations signed authorization cards upon transfer or hire into the facility.

The record reveals a well-established bargaining relationship between the Employer and Intervenor. The parties have negotiated three agreements, the most current beginning on February 2001 and ending February 2005. The parties negotiated a change to the bargaining process to exclude local bargaining, which resulted in the now-existing master agreement. The agreement embodies the wage rates, benefits, work rules, operating procedures, and grievance procedures that apply company-wide. The record reflects that, in each instance, the parties agreed upon the changes that Petitioner urges as compelling circumstances rendering the existing

unit inappropriate. The Petitioner offers no evidence, other than the increase in the employee complement and changes occurring as a result of the collective bargaining process, of circumstances to support carving the three single-facility units from the established eleven-facility unit.

The Petitioner relies on ***John's Bargain Stores Corp.***, 160 NLRB 1519 (1966), ***General Extrusion Co.***, 121 NLRB 1165 (1958), and ***Long Transportation Co.***, 181 NLRB 7 (1970) in support of severance of the historical unit in this case. ***John's Bargain Stores Corp.*** is factually apposite to this case as it involved the severance of a warehouse unit from a multi-facility unit that included retail employees. As the Employer correctly notes in its post-hearing brief, the Board grounded its decision on the "strong showing of separate identity and interests" of the warehouse employees. ***John's Bargain Stores Corp.***, above at 1523, fn. 3. The instant case is not a retail industry case, but is a shipping/transport industry case. Further, the record does not reveal any evidence demonstrating the petitioned-for unit's separate identity and community of interest. *Id*. at 1521.

The Petitioner also argues that contract bar and expanding unit principles expounded in ***General Extrusion Co.*** and ***Long Transportation Co.*** should apply to the instant case, yet the Petitioner fails to offer any analysis or legal authority in support of its theory. The parties in this case stipulated that there is not a contract bar to the conduct of an election; therefore, I find the Petitioner's cited legal authority inapplicable. ***General Extrusion Co.*** involved a new company undergoing operational change, with a bargaining relationship in its infancy. Here, the record revealed a well-established business operation and bargaining relationship, where the increased complement of employees is attributed to business success. In ***Long Transportation Co.***, the Board found the record lacked evidence that a contractually required card check was conducted,

and therefore the collective bargaining agreement could not be recognized for contract bar purposes. ***Long Transportation Co.***, above. In the case at hand, although a card check was not required, a card check was in fact conducted as the Employer commenced operations at each new facility.

Based on the record evidence as a whole, I conclude that the Petitioner failed to demonstrate compelling circumstances that would override the extensive bargaining history between the Employer and Intervenor and allow three single facility units to be carved from the existing eleven-facility unit. ***Trident Seafoods, Inc.***, 318 NLRB 738, 740 (1995); ***Met Electrical Testing Co.***, 331 NLRB 872, 873 (2000). Contrary to the Petitioner's assertion that the single-facility unit presumption analysis applies to the case at hand, I find that the issue "…is not whether a previously unrepresented unit is appropriate, but whether a historically recognized unit is inappropriate." ***Trident Seafoods, Inc.***, above at 739. The Board has applied the principles upon which my decision is based to representation petitions. *See, e.g.*, ***Met Electrical Testing Co.***, above. Further, the record contains no evidence to show that the bargaining history is repugnant to Board policy. ***Ready Mix USA, Inc.***, 340 NLRB No. 107 (2003); ***P.J. Dick Contracting***, 290 NLRB 150, 151 (1988).

Finally, the record reflects the Employer also raised accretion as an alternative theory in support of dismissal of the petition. Although the record evidence is replete with evidence that may support this argument, the Board follows a restrictive policy in finding accretion because it forecloses the employees' basic right to select the representative of their choosing. ***Melbet Jewelry Co.***, 180 NLRB 107, 109 (1970). Based on my findings set forth above, I find it unnecessary to rule on this issue.

Based on the forgoing, the petition is dismissed.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The parties stipulated, and I find, that the Employer, Auto Truck Transport Corp. is a Georgia corporation engaged in the business of providing transport and cargo handling services for clients at and between various facilities located in the United States, including the State of Texas. During the last calendar year, a representative period, the Employer, in conducting its business operation, derived gross revenues in excess of $50,000 from sales or performance of services directly to customers outside the State of Texas. During the same period, the Employer also purchased and received for its use in its Texas facilities goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Texas and had annual gross revenues in excess of $1,000,000.

3. The Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

4. A question concerning representation does not exist.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST on **June 23, 2004**. The request may **not** be filed by facsimile.

DATED June 9, 2004, at Fort Worth, Texas.

/s/ Curtis A. Wells

Curtis A. Wells, Regional Director
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